

JUDGE BRODERICK

DAVID GRAFF (DG7011)
RACHAEL KIERYCH (RK1339)
ANDERSON KILL P.C.
1251 Avenue of the Americas
New York, NY 10020
Dgraff@andersonkill.com
Rkierych@andersonkill.com

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER D. SCHIFF, AND EURO PACIFIC
CAPITAL INC.,

Plaintiffs,

vs.

YAYI INTERNATIONAL INC.,

Defendant.

Index No.:

LOCAL RULE 56.1 STATEMENT OF UNDISPUTED FACTS

Pursuant to Rule 56.1 of the local rules of the United States District Courts for the Southern and Eastern Districts of New York, Plaintiffs Peter D. Schiff, and Euro Pacific Capital, Inc. ("Plaintiffs") in support of their Motion for Summary Judgment in Lieu of Complaint dated January 16, 2015 contends that for purposes of its Motion for Summary Judgment in Lieu of Complaint there is no genuine issue to be tried as to the following material facts:

1. On or about September 27, 2010, Plaintiffs, along with other investors, and Yayi entered into the Note¹ whereby Yayi promised to pay Investor Plaintiff a total of

¹ This debt is convertible to an equity stake in Yayi's company pursuant to Section 5 of the Note, which states "[e]ach holder of the Notes shall have the right, exercisable at any time prior to the Maturity Date, to convert all, but not less than all, of the principal amount then outstanding into shares of [Yayi] Company's common stock, par value \$0.001 per share [] at a conversion price [] equal to \$2.00 per share []." To date Investor Plaintiff has not converted the debt to equity pursuant to the Note.

\$8,920,000 (the “Principal”) at nine percent (9%) interest per annum. See Affidavit of Peter Chema sworn to January 15, 2015 (hereinafter “Chema Aff.”), Exhibit 1.

2. Pursuant to the Note, “the principal amount hereof and all accrued but unpaid interest shall be paid in full to the Holder on the three (3) year anniversary of the date of closing of the Minimum Amount” (hereinafter the “Maturity Date”). Id. Pursuant to the Securities Purchase Agreement between Yayi and Euro Pacific, acting as a “Placement Agent” on behalf of the Investor Plaintiff, the “Minimum Amount” as cited in the Note was closed upon the execution of the Securities Purchase Agreement on or about September 27, 2010. See Chema Aff., Exhibit 2. As such, pursuant to the aforementioned agreements, the Maturity Date for the Note was September 27, 2013.

3. Moreover, the pertinent language of Section 3 states “[t]he Interest [] shall accrue on the outstanding principal amount of this Note from the date hereof until such principal amount is repaid in full at the rate of nine percent (9%) per annum, payable semiannually in arrears on the first and third calendar quarters (i.e., March 31 and September 30) commencing March 31, 2011.” See Chema Aff., Exhibit 1.

4. Section 12 of the Note also states that “[t]he Company agrees that, in the Event of Default, to reimburse the Holder for all reasonable costs and expenses (including reasonable legal fees of one counsel) incurred in connection with the enforcement and collection of this Note.” See Chema Aff., Exhibit 1 at Section 12.

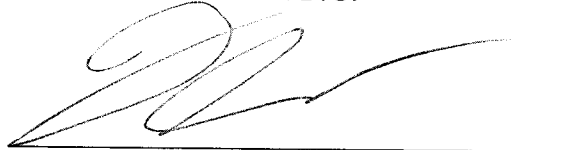
5. Defendant defaulted under the terms of the Note as it ceased making interest payments after September 30, 2012—over a year before the Maturity Date—and subsequently failed to tender any of the principal amount of the monies due and owed under the

Note. See Chema Aff., ¶¶ 10-11. Thus, Defendant is required to pay Plaintiffs the monies due and owed under the Notes with interest at a rate of 9% per annum thereon.

Dated: January 16, 2015
New York, New York

Respectfully submitted,

ANDERSON KILL P.C.

A handwritten signature in black ink, appearing to read 'David Graff', is written over a horizontal line.

David Graff, Esq.
Rachael Kierych, Esq.
1251 Avenue of the Americas
New York, New York 10020
Tel.: 212-278-1000
Fax: 212-278-1733

Attorneys for Plaintiffs